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In re Application of	:	
PETER et al.	:	
Application No.: 09/403,443	:	
PCT No.: PCT/CH98/00157	:	
Int. Filing Date: 22 April 1998	:	
Priority Date: 23 April 1997	:	DECISION ON RECONSTRUCTION
Atty. Docket No.: 6599	:	OF APPLICATION FILE and
For: PROPELLING DEVICE FOR A	:	PETITION UNDER 37 CFR 1.181
PISTON IN A CONTAINER	:	
CONTAINING A LIQUID	:	
MEDICAMENT	:	

This is a decision in response to the applicants' "Resubmission of Previously Filed Petition under 37 CFR 1.181 for Reconstruction of File and Examination Thereof" for papers originally filed by applicants on 22 October 1999 and resubmitted on 13 December 2000 and 07 March 2001. For the reasons set forth below, the petition is being treated as a petition under 37 CFR 1.181 to accept the declaration as filed on 13 December 2000.

BACKGROUND

On 22 April 1998, applicants filed international application No. PCT/CH98/00157 which claimed priority of an earlier German application filed 23 April 1997. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 29 October 1998.

On 29 October 1998, a Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority

date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 23 October 1999.

On 22 October 1999, applicants filed a transmittal letter (PTO-1390) requesting entry into the national stage in the United States of America under 35 U.S.C. § 371. Filed with the Transmittal Letter was, *inter alia*, the requisite basic national fee and an English translation of the international application. Although applicants did not file the executed declaration at this time, the \$130 surcharge for filing the declaration after the thirty month period was paid. The national stage papers were tentatively assigned application no. 09/403,431 and applicants' date-stamped itemized postcard was returned to applicants identifying the application no. as 09/403,431. The application papers have since been reassigned the official application no. 09/403,443.

On 13 December 2000, applicants filed a "Petition Under 37 CFR 1.181 for Reconstruction of File and Examination thereof" and an executed declaration, dispatched by Express Mail under 37 CFR 1.10. However, this communication is not found in either the present application file or the application file of 09/403,431.

On 07 March 2001, applicants filed a "Resubmission of Previously Filed Petition Under 37 CFR 1.181 for Reconstruction of File and Examination thereof". The resubmission is accompanied by: -

(1) a copy of "Petition under 37 CFR 1.181 for Reconstruction of File and Examination Thereof", an executed Declaration; a copy of the Customer Copy of the Express Mail label (EL501538364US); and a copy of the itemized returned postcard receipt date-stamped by the USPTO 13 December 2000;

(2) a copy of a Transmittal Letter Concerning a Filing under 35 U.S.C. § 371 (Form PTO-1390); a copy of the Customer Copy of the Express Mail label (EL115447733US); Certificate of Mailing by Express Mail bearing the same number; a copy of the Preliminary Amendment; a copy of check #807890 in the amount of \$970, payable to the Commissioner of Patents and Trademarks; itemized post card receipt date stamped 22 October 1999 by the USPTO;

Counsel asserts that the above-mentioned papers are a true and correct copy of the application as filed on 22 October 1999 and requests that these copies be used to reconstruct the application file.

On 23 May 2001, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and the surcharge for filing the oath or declaration after the thirty month period was required. The notification set a one month time limit in which to respond.

DISCUSSION

A review of USPTO records reveals that applicants' original papers were received on 22 October 1999 and were assigned application no. 09/403,443 and are found in that file. Therefore, applicants' "Petition under 37 CFR 1.181 for Reconstruction of File and Examination Thereof" is considered moot. However, it is being treated as a petition under 37 CFR 1.181 to accept a copy of the declaration as filed on 13 December 2000.

As noted above, the original declaration filed on 13 December 2000 was not found upon review of the file for U.S. application nos. 09/403,443 or 09/403,431. Applicants provided a true copy of the executed declaration, along with the following evidence: (1) an itemized post card receipt date-stamped by the USPTO 13 December 2000 and (2) customer copy of the Express Mail label #EL501538364US bearing a "Date-In" of 13 December 2000; and (3) the Certificate of Express Mailing on the "Petition Under 37 CFR 1.181 for Reconstruction of File and Examination thereof" which indicated that the executed declaration was enclosed.

Applicants provided acceptable evidence with the production of the true copy of the executed declaration and post card receipt date stamped by the United States Patent and Trademark Office (USPTO) for 13 December 2000 that the USPTO received the declaration on 13 December 2000. Accordingly, the declaration is accepted as filed on 13 December 2000. It is noted that the declaration executes 09/403,431, the application number which appeared on applicants' 22 October 1999 date-stamped itemized postcard receipt and which since has been changed to 09/403,443. The declaration is acceptable in fulfilling the requirements of 35 U.S.C. 371(c).

In light of the filing of the declaration on 13 December 2000 and payment of the surcharge for filing the declaration after the thirty month period on 22 October 1999, the Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) mailed on 23 May 2001 is hereby VACATED. However, a review of the English translation of the international application indicates that drawing sheet 1/13 (Figures 2 & 3) contains German language. This drawing sheet must be translated before the application can be accepted under 35 U.S.C. 371(c).

CONCLUSION

Applicants' "Petition under 37 CFR 1.181 for Reconstruction of File and Examination Thereof" is considered moot. The petition under 37 CFR 1.181 to accept a copy of the declaration as filed on 13 December 2000 is GRANTED.

Applicants are advised to reference application no. **09/403,443** in all future communications regarding this application.

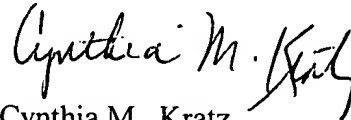
This application is being forwarded to the National Stage Processing Branch of the International Division for further processing in accordance with this decision. The Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) mailed on 23 May 2001 is hereby VACATED. The declaration is accepted as filed on 13 December 2000.

A new Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) will be issued indicating that a translation of drawing sheet 1/13 is required.



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